
(2006) 10 AHC CK 0152
In the Allahabad High Court

In Re: Parasram Puria Trading and Finance Ltd. (in Liquidation)

Date of Decision : 12-10-2006

Acts Referred:

COMPANIES ACT, 1956 — Section 209A, 211, 227, 269, 292
Criminal Procedure Code, 1973 (CrPC) — Section 468

Citation : (2007) 135 CompCas 65 : (2007) 1 CompLJ 138 : (2007) 76 SCL 223

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sunil Ambwani, J.—M/s. Parasrampuriah Trading and Finance Ltd. was wound up by this Court on March 25, 1998, in a creditors' winding up petition No. 58 of 1997, filed by M/s. GTC Industries Ltd. The official liquidator has been appointed as liquidator of the company, the statement of affairs have been filed.

2. Prior to the winding up of the company the Central Government appointed Shri BKL Srivastava, inspecting officer to inspect the books of account and statutory records of the company u/s 209A of the Companies Act. He carried out inspection for the period March 31, 1990 to March 31, 1994, and submitted his report dated July 31, 1995, to the Registrar of Companies, Regional Director, Company Affairs and the Central Government. He found that the directors of the company have committed several contraventions, namely, that the funds of the company were regularly being used by the directors for their personal gains, and that Shri S.K. Parasrampuriah withdrew during the financial year March 31, 1993, an average amount of more than Rs. 2 lakhs and thereafter, in the year 1993-94 more than Rs. 5 lakhs for his personal use without paying any interest. He made several investments in other group concerns, namely, M/s. Tirupati Roller and Flour Mills P. Ltd., Kalpana Mercantile Ltd., Macro International Ltd., and Radha Roller and Flour Mills Ltd., without charging interest. He also found that various activities were made in the company without furnishing any statutory information. The company became a public limited company u/s 43A of the Companies Act, 1956 ("the Act") with effect from October 1, 1985, but the company did not make any disclosure and it is only when the matter was taken up with the company by the

Central Government on March 24, 1995, that the turnover has increased beyond Rs. 1 crore, the company made the disclosure.

3. The inspector further found that the appointment of the directors and their remuneration after the company became public limited company was not approved by the Central Government. The inspector also reported contraventions of Sections 211 and 227 of the Companies Act, 1956, and concluded as follows:

Conclusion.--The inspection has revealed that the directors have treated the company as their own establishment and have not been honouring the corporate personality. The funds of the company has been used by the directors for their personal gains and withdrawal of the funds have been made even without approval of the board of directors, general meeting or the Central Government as required under the Act.

Serious departures from the compliance of provisions of the Act are there while preparing the balance-sheets. Auditors have not cared even for the converted status of the company and have audited balance-sheet of private limited company even after conversion on October 1, 1985.

The misuse of funds by the directors and their relatives to the tune of the such extent which is three four also be considered as sufficient and just and fair for petition u/s 433/439 also. It may be supported by the facts that agency of the company with GTC Industries has now come to an end and company has no proposal for diversification or adoption of new business.

The specific contraventions of the Act have already been discussed in paras above. However, the facts remains that the company is a closely held company of the Parasrampur family members. The inspection of group companies as suggested at para. 5.1 may also be considered.

4. It appears that the report was not acted upon for a very long period of time until the company was wound up. The Central Government started again on this report only on December 19, 2001, when it sent a letter to the official liquidator to initiate proceedings under Sections 542 and 543 of the Companies Act, 1956. The official liquidator received the letters of the Central Government dated December 19, 2001 and March 11, 2001, and filed application for cognizance and prosecution for misfeasance. According to the official liquidator the proceedings u/s 543(2) of the Act were within limitation.

5. The court to cognizance of the misfeasance proceedings and called upon the ex-directors to appear on September 23, 2005. The following charges were framed against them:

The respondents ex-directors are thus charged as follows:

1. That you, Sri Gopal Pandey, Sri Vishnu Kant Misra, Smt. Chandra Kala Parasram Puria and Shri Sudhir Kumar Parasram Puria, ex-directors of M/s. Parasram Puria Trading and Finance Ltd., (in liquidation) (wound up on March 25,

1998) made investments of the amounts detailed in para. 5.2 of the report of the Assistant Inspecting Officer dated July 31, 1995, appointed by the Central Government u/s 209A of the Companies Act, 1956, in Kanpur Cigarettes Ltd., Kalpana Mercantile Ltd., Vishwa Jyoti Marketing P. Ltd., Nath Mercantile Ltd., and Ambar Mercantile Ltd., in the shares of State Bank of India during the year March 31, 1994, in violation of Sections 371(i) and Section 372(6), (7) of the Companies Act, 1956, and failed to make statutory entries within seven days of the investment u/s 372(vi) and (vii) and thereby conducted the business of the companies in a manner prejudicial to the interest of the shareholders and creditors, violating the provisions of Sections 542 and 543 of the Companies Act, 1956, punishable u/s 542(3) of the Companies Act, 1956.

2. That you, Sri Gopal Pandey, Sri Vishnu Kant Misra, Smt. Chandra Kala Parasram Puria and Shri Sudhir Kumar Parasram Puria, ex-directors of M/s. Parasram Puria Trading and Finance Ltd. (in liquidation) having registered the turnover of the company during the financial years June 30, 1983, Rs. 6,64,483, June 30, 1984 of Rs. 1,23,27,937 and June 30, 1985 of Rs. 2,16,36,263 the average of the three consecutive financial years exceeded Rs. 1 crore, and attracted Section 43A of the Companies Act, 1956, failed to inform the Registrar of Companies within three months of the date when the company became the public company which information was given to the Registrar of Companies only on April 30, 1990, and thereby continued to treat the company as private company till that date in violation of Sections 295, 211, 269, 227 and 43A of the Companies Act, 1956 and thus committed offence under Sections 542 and 543 of the Companies Act punishable u/s 542(3) of the Companies Act.

3. That you, Sri Gopal Pandey, Sri Vishnu Kant Misra, Smt. Chandra Kala Parasram Puria and Shri Sudhir Kumar Parasram Puria, ex-directors of M/s. Parasrampur Trading and Finance Ltd. (in liquidation) took loans from the company from time to time in your own names and in the names of your relatives and friends without disclosing the maximum amount due from the directors in the balance-sheet, without any interest and failed to repay the same which is so found in paras. 5.1, 5.4 and 5.7 of the Asst. Inspecting Officer's report dated July 31, 1995, appointed by the Central Government u/s 209A of the Companies Act, up to the year 1993-94 and thereafter certified that the company has not granted any loans to the parties listed in the registration of contract u/s 301 and thereby confirming that the auditors were not given the information and explanation which was necessary for the purpose of the audit and thus could not discharge their duties as auditors, have contravened the provisions of Sections 292, 295 and 227 of the Companies Act, 1956, and thereby committed offence u/s 542(3) of the Companies Act.

List this matter on November 21, 2005, for recording evidence to be led by the official liquidator. In the meantime, the respondents ex-directors may, if they so like file their reply to the charges.

6. The official liquidator has filed his evidence by way of an affidavit. He was not

cross-examined by Shri R.P. Agrawal, learned Counsel appearing for the respondents. Shri BKL Srivastava, the Deputy Director (Inspection), office of the Regional Director (NR), Noida, appeared and filed his affidavit in evidence, and was cross-examined by Shri R.P. Agrawal.

7. Before proceedings to make submissions on charges on its merits Shri R.P. Agrawal raised preliminary objection regarding jurisdiction of the court to try the offences, which are criminal in nature and the issue of limitation. He submits that inspections were not carried out either two years immediately preceding the commencement of winding up, i.e., May 20, 1997, when the company petition was filed or within three years, the limitation provided for initiating criminal prosecution u/s 468 of the Criminal Procedure Code. He further submits that the inspections were not carried out even after the winding up order was made. There were no complaints by any person. The period of inspection was March 31, 1990 to March 31, 1994, and that the report was submitted on July 31, 1995.

8. I have heard Shri R.P. Agrawal for the ex-directors and Shri Rajnath N. Shukla, learned Counsel for the official liquidator. Pre-winding up prosecution for misfeasance including withholding or defalcation of money, maintenance of accounts, and other offences under the Companies Act can be initiated at the instance of the Central Government under Sections 401 and 406 of the Companies Act, by virtue of which Schedule XI will become applicable attracting all the provisions of Sections 539 to 544 of the Act. With regard to post-winding up proceedings he submits that the Central Government loses its jurisdiction to investigate and that only the official liquidator can initiate action Sections 538 to 544 of the Act. In the present case he submits that the directors are being prosecuted under Sections 542 and 543 of the Companies Act, 1956, which provides that where a company is wound up and it is shown that proper books of account were not kept by the company throughout the period of two years immediately preceding the commencement of winding up or the period between incorporation of the company and commencement of the winding up, whichever is shorter, every officer of the company in default shall be liable. In case of Section 542 of the Act if in the case of winding up of the company it appears that the business of the company was carried out with intention to defraud the creditors of the company or any other person or for any fraudulent purpose, on the application of the official liquidator or liquidator or any contributory, the persons responsible can be prosecuted without any limitation of liability. Under Sub-section (3) where the business of the company is carried on with such intention or for such purpose as is mentioned in Sub-section (1), every person, who was knowing the party carrying on the business in the manner aforesaid shall be punishable with imprisonment for a period, which may extend to two years or with fine, which may extend to Rs. 50,000 or with both.

9. Shri R.P. Agrawal submits that in the present case inspections were not made on any complaints. The period of inspection is much prior to commencement of the winding up and in any case three years before the date of winding up and

that the report dated July 31, 1995, was not acted upon by the Central Government. It is only after the company was wound up on March 25, 1998, much thereafter, on December 19, 2001, that the letter was sent by the Central Government to prosecute the accused.

10. Shri Rajnath N. Shukla appearing for the official liquidator submits that there is no limitation u/s 542(1) and Section 628 and that in both the sections where it is found that the company had conducted its business fraudulently and has submitted false statements, the offence is punishable with imprisonment, which may extend to two years and also liable to fine. He submits that the directors were maintaining personal accounts in the company. They were not showing investments and were taking out money at their will. They did not prepare accounts properly and declare that the company's turnover exceeds Rs. 1 crore u/s 43A of the Act. It is contended by Shri Shukla that these acts contributed to the losses on account of which the company was ultimately wound up and thus these acts squarely fall within the mischief of misfeasance.

11. I have given careful consideration to the submissions of both the parties on the issue of jurisdiction and limitation. It is apparent from the record that there was no complaint against the company. The inspections were carried out in the year 1995 for the period beginning from March 31, 1990, to March 31, 1994. The report was submitted confirming certain violations on July 31, 1995. The company petition was filed on May 20, 1997, on which notices were issued and the company was wound up on March 25, 1998. The Central Government could not have initiated investigations after the winding up. The matter was kept in the cupboard from July 31, 1995, to December 19, 2001, when a letter was sent to the official liquidator to initiate misfeasance proceedings. The liquidator did not find out misfeasance during the liquidation proceedings. He has nowhere concluded or has stated in his pleadings or affidavit that because of the reported activities the company suffered losses and was ultimately wound up. In fact the official liquidator in the present case has acted only as post office by filing misfeasance proceedings on the instructions of the Central Government.

12. In case of violations of falsification of accounts and misfeasance after winding up, the liquidator can look into the accounts for the period of two years before the commencement of winding up, unless the allegations of mischief and misfeasance fall under Sections 542(1) and 542(3) of the Act. In the present case the offences do not fall under these sections. The official liquidator did not detect these violations nor has made any complaint in this regard. The period of inspection and the report is much prior to the date of winding up and, much before two years preceding the commencement of winding up.

13. The ex-directors and officers of the company are not liable to be prosecuted several years after the Central Government got the reports. There is no reason on record as to why the prosecution was not initiated by the Central Government, which was competent to initiate such prosecution for a long period of time, before the company was wound up.

14. The misfeasance proceedings are found to be suffering from both want of jurisdiction and are barred by limitation. The charges against the ex-directors and the notices are, consequently, dropped. The application filed by the official liquidator is dismissed.